

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

DRAFT ORDER NO. R3-2012-0008

**GENERAL CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS – TIMBER
HARVEST ACTIVITIES
IN THE CENTRAL COAST REGION**

WHEREAS, the California Regional Water Quality Control Board, Central Coast Region (hereinafter Regional Board or Central Coast Water Board) finds that:

1. California Water Code (CWC) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (ROWD) containing such information and data as may be required by the Regional Board.
2. The Central Coast Water Board prescribes waste discharge requirements except where the Central Coast Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is in the public interest pursuant to CWC (Sections 13267 and 13269).
3. CWC Section 13267 states:
 - (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.
 - (b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
4. CWC Section 13269(a) states:
 - (1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of any necessary meeting by publication pursuant to Section 11125 of the Government Code.

(2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based, monitoring, except as provided in paragraph (3) below. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

(3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

5. In accordance with CWC Section 13269, the Central Coast Water Board shall regulate discharge of waste associated with timber harvest activities through the requirements of this general conditional waiver, or, for timber operations that are not eligible for this waiver, through individual waste discharge requirements or individual conditional waivers.
6. The Central Coast Water Board has adopted the Water Quality Control Plan for the Central Coastal Basin (Basin Plan), which establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Central Coast Region.
7. Pursuant to the Basin Plan and State Board plans and policies, including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
 - a. Agricultural Supply (AGR)
 - b. Aquaculture (AQUA)
 - c. Preservation of Biological Habitats of Special Significance (BIOL)
 - d. Cold Freshwater Habitat (COLD)
 - e. Commercial and Sportfishing (COMM)
 - f. Estuarine Habitat (EST)
 - g. Freshwater Replenishment (FRSH)
 - h. Ground Water Recharge (GWR)
 - i. Industrial Service Supply (IND)
 - j. Migration of Aquatic Organisms (MIGR)
 - k. Municipal and Domestic Supply (MUN)
 - l. Navigation (NAV)
 - m. Hydropower Generation (POW)
 - n. Industrial Process Supply (PRO)
 - o. Rare, Threatened, or Endangered Species (RARE)
 - p. Water Contact Recreation (REC-1)
 - q. Non-contact Water Recreation (REC-2)
 - r. Shellfish Harvesting (SHELL)
 - s. Spawning, Reproduction, and Development (SPWN)
 - t. Warm Freshwater Habitat (WARM)

- u. Wildlife Habitat (WILD)
 - v. Inland Saline Water Habitat (SAL)
8. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. The factors in CWC Section 13241, including economic considerations, were considered as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Order implement these previously developed water quality objectives. Compliance with water quality objectives should protect the beneficial uses listed in the above paragraph.
 9. The California Department of Forestry and Fire Protection (CalFire) and the California Board of Forestry (BOF) regulate timber harvest activities on nonfederal lands in accordance with the Z'berg-Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.) and the California Forest Practice Rules (Title 14, California Code of Regulations, Section 895 et seq.). CALFIRE is the state agency with primary jurisdiction over timber activities. The Central Coast Water Board cannot issue permits to allow timber harvesting, but regulates water quality effects from harvesting operations that have received a permit from CALFIRE. CALFIRE issues such permits by approving timber harvesting plans (THP) or non-industrial timber management plans (NTMP). The Central Coast Water Board does not have legal authority to require an alternative project.
 10. In 1988, the State Water Board:
 - (a) Conditionally certified the Water Quality Management Plan for Timber Operations on Nonfederal Lands, which included those California Forest Practice Rules selected as best management practices and the process by which those rules are administered.
 - (b) Designated CALFIRE and the BOF as joint Water Quality Management Agencies (WQMA).
 - (c) Executed a Management Agency Agreement with CALFIRE and BOF for the purpose of implementing the certified plan and WQMA designations.
 11. The Management Agency Agreement between the State Water Board and CALFIRE/BOF required a formal review of the California Forest Practice Rules and administering processes no later than six years from the date of certification. To date, the State Water Board and CALFIRE/BOF have not completed the review.
 12. The USEPA has not approved the State Water Board's certification of the California Forest Practice Rules and administering processes for regulation of timber harvest activities on nonfederal lands in California.
 13. The Central Coast Water Board, in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) (CEQA), has conducted an Initial Study in accordance with Title 14, California Code of Regulations, Section 15063.
 14. The Secretary of the Resources Agency has certified that CALFIRE's THP regulatory program can function as a substitute for an Environmental Impact Report or a negative declaration (CEQA Guidelines Section 15251.) Registered Professional Foresters submit either a THP or NTMP and only CALFIRE has the authority to grant discretionary approval for projects. CALFIRE considers all the significant environmental effects of the project and makes a finding under CEQA Guidelines section 15091 for each significant effect. If CALFIRE finds that the timber operations will not have a significant effect on the

environment, a THP or NTMP serves as a substitute negative declaration. If CALFIRE finds that the timber operations may have a significant effect on the environment, the THP or NTMP serves as a substitute environmental impact report, and includes mitigation of potential impacts. CALFIRE consults with the Central Coast Water Board as a THP or NTMP is developed. This Waiver Order requires enrolled Dischargers to comply with requirements of the respective THP or NTMP.

15. Relevant factors in determining whether a project covered by a general conditional waiver is in the public interest include the following:

- Whether the discharge is already regulated by another governmental entity.
- Whether the discharger will observe reasonable practices to minimize the deleterious effects of the discharge.
- Whether a feasible treatment method exists to control the pollutants in the discharge.
- Whether a resource agency (California Department of Fish and Game, County of San Mateo, Santa Cruz, Santa Clara, Monterey, San Benito, San Luis Obispo, Santa Barbara, or Ventura) has filed a water quality related non-concurrence with CALFIRE regarding the proposed harvest and that non-concurrence has not been resolved.
- Whether conditionally waiving ROWDs and/or waste discharge requirements will adequately protect beneficial uses while allowing the Central Coast Water Board to utilize more of its scarce resources to conduct field oversight, public outreach and, where necessary, enforcement.

16. The timber harvest plan regulatory program is regulated by CALFIRE and requires the Discharger to implement practices to control water quality effects, including erosion and sedimentation. Local ordinances also require various controls. The conditions of this Order protect beneficial uses by:

- (i) Prohibiting pollution, contamination or nuisance.
- (ii) Requiring monitoring and compliance with applicable water quality control plans.
- (iii) Requiring the Discharger to grant access to Central Coast Water Board staff to perform inspections.
- (iv) Requiring approval of the THP or NTMP by the California Department of Forestry and Fire Protection.

17. The Central Coast Water Board finds that the adoption of the “*General Conditional Waiver of Waste Discharge Requirements - Timber Harvest Activities*” will not have a significant impact on the environment and will be in the public interest provided that dischargers:

- (a) Comply with the conditions of this Order; and
- (b) File with the Central Coast Water Board the applicable eligibility documents as described herein, to demonstrate that compliance with the waiver conditions will be achieved; and
- (c) Comply with applicable State Water Board and Central Coast Water Board plans and policies and as those plans and policies may be amended from time to time through the amendment process.

18. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Central Coast Water Board from administering enforcement remedies (including civil liability) pursuant to the CWC.
19. A waiver of waste discharge requirements for a type of discharge may be superseded by the adoption by the State Water Board or Central Coast Water Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge.
20. Management practices are the most feasible treatment method to control the discharges. If a proposed timber harvest is conducted in the manner prescribed in the THP or NTMP and the conditions of this Order, a waiver of waste discharge requirements is in the public interest and is consistent with applicable water quality control plans, including the Basin Plan.
21. The winter period for the Central Coast Region shall be October 15 through April 15.
22. The rain year for the Central Coast Region shall be July 1 through June 30.
23. The results from the Eligibility Criteria for a specific THP or NTMP will function as a minimum level for establishing monitoring requirements for that THP or NTMP.
24. The Central Coast Water Board has adopted a Negative Declaration in accordance with CEQA and the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.). The Negative Declaration concludes that the waiver of waste discharge requirements for specific types of timber harvest operations pursuant to this Order will not have a significant impact on the environment.
25. Copies of the proposed Order and monitoring and reporting plan were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA.
26. The Central Coast Water Board conducted a public hearing on July 12, 2012, in Watsonville, California and considered all testimony and evidence concerning this matter.

THEREFORE IT IS HEREBY ORDERED:

1. In accordance with CWC Section 13269, the waste discharges related to timber harvest activities in the Central Coast Region, that are not subject to individual conditional waivers or waste discharge requirements, shall be regulated by general conditional timber harvest waiver requirements, and waste discharge requirements are hereby waived subject to the following conditions:
 - a. "Discharger" means the landowner and anyone working on behalf of the landowner in the conduct of timber harvest activities.
 - b. The Discharger shall submit a Notice of Intent (NOI) on the attached form (Attachment A) or on such other form that the Executive Officer requires. The NOI constitutes a report of waste discharge. This waiver shall not take effect as to a particular timber

operation until the Executive Officer approves the NOI in writing.

- c. The Discharger shall comply with all requirements of applicable water quality control plans as these may be modified from time to time pursuant to amendments to water quality control plans adopted by the Central Coast Water Board and approved by the State Water Resources Control Board (State Water Board) and water quality control plans and policies adopted by the State Water Board.
- d. The Discharger shall obtain CALFIRE approval of a THP and/or NTMP for the timber harvest activities before enrollment in this waiver takes effect. The Discharger shall conduct timber harvest activities in accordance with the approved THP or NTMP and with all applicable sections for the Forest Practice Rules.
- e. Discharger shall notify the Water Board concurrently when submitting a request to CALFIRE for a minor or major amendment.
- f. The Discharger shall obtain and comply with all local, state and federal permits required by law. The Discharger shall comply with all applicable county ordinances related to timber operations, including zoning ordinances.
- g. The Discharger shall not create a condition of pollution, contamination, or nuisance, as defined by CWC Section 13050.
- h. The Discharger shall not discharge any waste not specifically regulated by this Order, except in compliance with CWC Section 13264. Wastes specifically regulated by this Order include: earthen materials including soil, silt, sand, clay, rock and organic materials such as slash, sawdust, or bark. Examples of waste not specifically regulated by this Order include petroleum products, hazardous materials, or human wastes.
- i. The Discharger shall not cause alteration in stream temperature that exceeds Basin Plan requirements.
- j. The Discharger shall allow Central Coast Water Board staff reasonable access, in accordance with Public Resources Code section 4604(b) and California Water Code section 13267, onto the affected property for the purpose of performing inspections to determine compliance with the conditional waiver requirements.
- k. Pursuant to California Water Code Section 13267, the discharger shall comply with Monitoring and Reporting Program No. R3-2012-0008. The Central Coast Water Board needs this information to verify that a general conditional waiver of waste discharge requirements is the appropriate regulatory tool for timber harvest activities in San Mateo, Santa Cruz, Santa Clara, Monterey, San Benito, San Luis Obispo, Santa Barbara, and Ventura counties. This Order does not regulate point-source discharges that require an NPDES permit under the Clean Water Act, including but not limited to silvicultural point-source discharges as defined in 40 CFR Chapter 1 Part 122.27.
- l. The Discharger shall take immediate action to repair failed or faulty management measures, including crossings, culverts, roads and other sources of sediment.
- m. All erosion and sediment control devices, management measures and mitigations prescribed in a THP or NTMP shall be maintained in good working order for the term of

the general waiver requirements.

- n. The Discharger shall comply with all requirements of the Executive Officer pursuant to MRP No. R3-2012-0008.
2. The Central Coast Water Board, based on the above-noted facts and findings, determines that it is not necessary at this time to adopt individual or general waste discharge requirements for waste discharges related to timber harvest activities that meet the conditions specified in this waiver and which are conducted in accordance with the requirements specified in this waiver.
3. This Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.
4. The Executive Officer shall not approve the NOI or shall terminate the applicability of a waiver to specific timber harvest activities (as applicable) if the Executive Officer makes any of the following determinations:
 - a. The timber harvest activity is not in compliance with any applicable condition of this waiver.
 - b. The timber harvest activity has varied in whole or in any part from the approved THP or NTMP, unless these changes result in better protection of water quality.
 - c. The timber harvest activity is likely to adversely affect the quality or beneficial uses of waters of the State. In making this determination, the Executive Officer shall consider, at a minimum, the THP or NTMP, information from the pre-harvest inspection or other site inspections, the Notice of Intent, the Eligibility Criteria, and all available monitoring reports.
5. Upon receipt of notice of termination of applicability of the waiver, the Discharger shall immediately cease all timber harvest activities that may result in waste discharges to waters of the State, other than activities necessary to control erosion. Upon notice of termination, the Discharger must file a report of waste discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the State may commence only upon enrollment by the Executive Officer under general waste discharge requirements, the adoption by the Central Coast Water Board of an individual waiver of waste discharge requirements or individual waste discharge requirements, or in accordance with CWC Section 13264(a).
6. This general conditional waiver shall become effective on July 12, 2012, and shall expire on July 12, 2017, unless terminated or reissued by the Central Coast Water Board. The Central Coast Water Board may terminate this waiver at any time, either as to a particular timber harvest or in its entirety.
7. Conditional Waiver Order No.R3-2012-0007 is hereby rescinded.
8. As provided by CWC Section 13350(a), any person who, in violation of any waiver condition, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, is subject to administrative or civil liability for the violation.
9. Any person affected by this action of the Central Coast Water Board may petition the State Water Board to review the action in accordance with section 13320 of the California Water

Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region on July 12, 2012.

Roger W. Briggs, Executive Officer

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